

**REMARKS**

Entry of the foregoing amendments is respectfully requested.

**Summary of Amendments**

By the foregoing amendments claims 1-6, 8-13, and 15-17 are cancelled and claims 18-43 are added, whereby claims 18-43 will be pending, with claims 18, 37 and 42 being independent claims.

Support for the new claims can be found throughout the present specification and in particular, the original claims and pages 5 through 7 of the specification.

Applicants emphasize that the cancellation of claims 1-6, 8-13, and 15-17 is without prejudice or disclaimer, and Applicants expressly reserve the right to prosecute the cancelled claims in one or more continuation and/or divisional applications.

**Summary of Office Action**

Claim 16 (apparently newly submitted claim 17 is intended) is rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing new subject matter.

Claims 1-6, 11, 13, 15 and 16 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bellon et al., FR 2,789,397 (hereafter "BELLON").

Claims 8-10 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BELLON in view of Snyder, U.S. Patent No. 4,708,813 (hereafter "SNYDER").

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Claim 12 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BELLON in view of Saint-Leger et al., U.S. Patent No. 5,939,077 (hereafter "SAINT-LEGER").

**Response to Office Action**

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the foregoing amendments and the following remarks.

***Response to Rejection under 35 U.S.C. § 112, First Paragraph***

Claim 17 is rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing new subject matter.

Applicants respectfully submit that claims 18-43 submitted herewith do not comprise any claim which can be considered to correspond to cancelled claim 17, wherefore this rejection is moot. Applicants emphasize that the cancellation of claim 17 is not to be construed as admission that the corresponding allegations set forth in the present Office Action are of any merit but merely is to expedite the issuance of patent with the claims submitted herewith.

***Response to Rejection of Claims under 35 U.S.C. § 103(a) over BELLON***

Claims 1-6, 11, 13, 15 and 16 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BELLON. The rejection essentially relies on Example 1 of BELLON and alleges that this example discloses a facial foam composition which

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comprises 22 % by weight of PEG-100 stearate glyceryl stearate (emulsifier B according to the present claims), 12 % by weight of stearic acid (emulsifier A) and 6 % by weight of octyldodecanol (co-emulsifier C) as well as 70 % by weight of nitrogen. The rejection goes on to state (page 4 of the present Office Action):

Bellon et al. do not expressly disclose that the amount of PEG-100 stearate glyceryl stearate, a polyethoxylated fatty acid ester in the instant claim 1 (I)-B, is 2-20%. Bellon et al. do not expressly disclose a ratio of A:B:C of 1:1:1.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to optimize the amount of PEG-100 stearate glyceryl stearate, a polyethoxylated fatty acid ester to 20% from 22%, and a ratio of A:B:C of 1:1:1.

One having ordinary skill in the art at the time the invention was made would have been motivated to optimize the amount of PEG-100 stearate glyceryl stearate, a polyethoxylated fatty acid ester to 20% from 22%, since 22% of PEG-100 stearate glyceryl stearate may read about 20% or is very close to 20%.

Applicants respectfully traverse this rejection. As an initial matter, it is pointed out that neither cancelled claim 1 nor any of the claims submitted herewith recite an amount of a polyethoxylated fatty acid ester of 2-20% by weight. For example, present independent claims 18 and 42 recite a total amount of emulsifiers A to C, i.e., not just the amount of emulsifier B, of from 2 % to 20 % by weight. The total amount of emulsifiers A to C according to Example 1 of BELLON, on the other hand, is 22 % + 12 % + 6 % = 40 %. Even if it is taken into account that the total concentrations indicated in Example 1 of BELLON add up to a little over 120 %, the total concentration of emulsifiers A to C, normalized to 100 %, would still be about 33 %, i.e., well above the total concentration of 20 % by weight recited in present independent claims 18 and 42, and even further above the total concentration of 15 % by weight recited in, e.g., present independent claim 37.

Moreover, BELLON does not provide any motivation whatsoever to optimize the total amount of emulsifiers A to C in Example 1 thereof. In this regard, it is pointed out that

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BELLON discusses the employment of emulsifiers A and B in the body of the specification, but the employment of octyldodecanol or any other fatty alcohol, i.e., a co-emulsifier C according to the claims submitted herewith, in the composition of Example 1 of BELLON is not discussed at all in this document, let alone indicated as being of any importance. In fact, the combination of emulsifiers A to C is employed in only one of the three examples of BELLON. The composition of Example 2 lacks an emulsifier B and the composition of Example 3 lacks both an emulsifier B and a co-emulsifier C as recited in the present claims.

In view of the foregoing, one of ordinary skill in the art is not provided with any motivation whatsoever by BELLON to use a combination of emulsifiers A to C other than the specific combination of Example 1 thereof in any gas-containing cosmetic or dermatological preparation, let alone motivated to optimize the total concentration of emulsifiers A to C recited in the present claims, in particular, to reduce the total concentration thereof in comparison to that of Example 1 of BELLON by at least about 13 % (i.e., more than a third).

For at least all of the foregoing reasons, BELLON does not render obvious the subject matter of any of the claims submitted herewith. Accordingly, withdrawal of the rejection under 35 U.S.C. § 103(a) over BELLON is warranted, which action is respectfully requested.

***Response to Rejection of Claims under 35 U.S.C. § 103(a) over BELLON in View of SNYDER or SAINT-LEGER***

Dependent claims 8-10 and 12 are rejected under 35 U.S.C. § 103(a) as allegedly

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being unpatentable over BELLON in view of SNYDER or SAINT-LEGER.

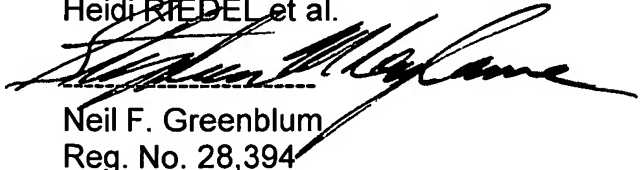
These rejections are respectfully traversed as well. Neither SNYDER nor SAINT-LEGER cure any of the deficiencies of BELLON set forth above and for this reason alone, a combination of the teachings of BELLON and SNYDER or SAINT-LEGER is unable to render obvious the subject matter of any of the present claims. Under these circumstances it does not appear necessary to comment on the corresponding allegations set forth in the present Office Action. However, Applicants' silence in this regard is by no means to be construed as an admission that any of these allegations are meritorious.

For at least all of the reasons set forth above, withdrawal of the rejection under 35 U.S.C. § 103(a) over BELLON in view of SNYDER or SAINT-LEGER is warranted and respectfully requested.

### **CONCLUSION**

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,  
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